

STATE OF WISCONSIN

Department of Justice

ORDER ADOPTING EMERGENCY RULES

INTRODUCTORY CLAUSE

The State of Wisconsin Department of Justice (“DOJ”) proposes an order to amend Wis. Admin. Code s. Jus 17.03(8), relating to the firearms training required for licenses authorizing persons to carry concealed weapons under s. 175.60, Stats.

ANALYSIS BY THE DEPARTMENT OF JUSTICE

The proposed emergency rule will amend Wis. Admin. Code s. Jus 17.03(8) by repealing the requirement that a “firearms safety or training course,” as defined and used in Wis. Admin. Code ch. Jus 17, must have a student-teacher ratio less than or equal to 50:1. The proposed emergency rule will be followed by a proposed permanent rule, also repealing the 50:1 requirement.

The legality of the 50:1 requirement is being challenged in pending litigation. In the course of that litigation, DOJ has determined that the 50:1 requirement is not enforceable under existing law and should be repealed. Consistent with that determination, DOJ has ceased enforcement of the 50:1 requirement. The public welfare requires formal repeal of the 50:1 requirement by emergency rule in order to make it clear to the public that the requirement is no longer being enforced and to promptly resolve the pending litigation with the least burden and inconvenience to the Court and the parties and with the least litigation expense to the people of the State of Wisconsin.

The scope of the proposed emergency rule was described in a scope statement approved by the Governor on January 27, 2016.

Statutes interpreted: ss. 175.60 (2) (b), (2g) (a), (3) (g), (4) (a), and (7) (e), Stats.

Statutory authority: s. 227.11(2) (a), Stats.

Explanation of statutory authority:

The proposed rule is authorized by s. 227.11(2)(a), Stats., which confers on each administrative agency the power to promulgate administrative rules that the agency determines to be necessary to effectuate the statutory provisions administered by the agency, as long as those rules do not exceed the bounds of correct interpretation of those provisions.

The rule proposed here is necessary to effectuate those portions of s. 175.60, Stats., that require DOJ to establish and operate procedures governing the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license.

Related statutes or rules: None.

Plain language analysis: Under existing law, a qualified Wisconsin resident may obtain from DOJ a license (“CCW license”) that permits the licensee to carry a concealed weapon anywhere in this state except as specifically prohibited by statute. *See* s. 175.60 (2g) (a), Stats. The eligibility requirements for a CCW license include a requirement that the applicant provide proof of firearms training or equivalent firearms experience in any of a number of statutorily enumerated forms. *See* s. 175.60 (3) (g), (4) (a), and (7) (e), Stats. Several of the enumerated categories use the phrase “firearms safety or training course.” *See* s. 175.60 (4) (a) 1. b. to e., Stats. The statute does not, however, define the meaning of that phrase.

On May 31, 2013, DOJ promulgated permanent administrative rules relating to CCW licenses. Those rules include a definition of “firearms safety or training course” which provides, in pertinent part, that such a course must be “instructor-led.” Jus 17.03(7). The rules also include a definition of the term “instructor-led” which provides, in pertinent part, that an instructor-led course must have “an instructor-student ratio that does not exceed 50 students per instructor.” Jus 17.03(8). Read together, those definitions require that a “firearms safety or training course” for CCW licensing purposes under s. 175.60 (4) (a) 1. b. to e., Stats., must have a student-teacher ratio less than or equal to 50:1.

Under s. 227.10 (2m), Stats., “[n]o agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with [subchapter II of ch. 227, Stats.]” Under s. 227.11 (2) (a) 3., Stats., “[a] statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.” In addition, s. 175.60 (2) (b), Stats., expressly prohibits DOJ from imposing conditions, limitations, or requirements on the issuance of a CCW license that are not specifically provided for in s. 175.60, Stats.

DOJ has concluded that the statutory provisions described in the preceding paragraph render unenforceable the 50:1 student-teacher ratio requirement in Jus 17.03 (8). In accordance with that conclusion, DOJ has ceased enforcing the 50:1 requirement. The rule proposed here will remove the 50:1 requirement from Jus 17.03 (8) and will thereby carry into effect the legislative policies contained in the above-referenced statutory provisions. The alternative of not removing the 50:1 requirement from Jus 17.03 (8) would be contrary to those legislative policies and would leave in the Administrative Code a requirement that DOJ is no longer enforcing.

Summary of, and comparison with, existing or proposed federal regulation: For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to training for state CCW licensing.

Comparison with rules in adjacent states:

A. Iowa

Iowa provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a nonprofessional permit to carry weapons. Iowa Code § 724.7(1). Iowa statutes specify a variety of methods by which a license applicant may demonstrate the requisite knowledge of firearms safety. Iowa Code § 724.9(1). Satisfaction of any of these methods may be documented by submitting: (1) a copy of a certificate of completion or similar document for a course or class that meets the statutory requirements; (2) an affidavit from the instructor or organization conducting such a course or class that attests that the applicant has completed the course or class; or (3) a copy of any document indicating participation in a firearms shooting competition. Iowa's administrative rules give these requirements additional substantive content through definitions of "firearm training and documentation" and "firearm training program." Iowa Admin. Code § 661.91.1(724).

B. Minnesota

Minnesota provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a permit to carry a pistol. Minn. Stat. § 624.714(2). A permit applicant must have received training in the safe use of a pistol within one year prior to the application. Minn. Stat. § 624.714(2a)(a). To establish such training, an applicant must submit a copy of a certificate signed by the training instructor and attesting that the applicant attended and completed the training. Minn. Stat. § 624.714(3)(c)(2).

C. Michigan

Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. Mich. Comp. Laws § 28.425b(7). A license applicant must demonstrate knowledge and training in the safe use and handling of a pistol by successfully completing a pistol safety

training program that meets statutorily prescribed requirements. Mich. Comp. Laws § 28.425b(7)(c). The training program must consist of at least eight hours of instruction, must cover specified subject areas, must include at least three hours on a firing range, must require firing at least 30 rounds of ammunition, and must be taught by an instructor certified by the state or by a national organization. Mich. Comp. Laws § 28.425j(1). The training program must provide an instructor-signed certificate indicating that the program meets the statutory requirements and was successfully completed by the license applicant and the applicant must include a copy of that certificate with the license application. Mich. Comp. Laws §§ 28.425b(1)(j) and 28.425j(1)(c).

D. Illinois

Illinois provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed firearm. 430 ILCS 66/10. A license applicant must provide proof of successful completion of a firearms training course that has been approved by the Illinois Department of State Police. The training course must be at least 16 hours in length, must cover specified subject areas, and must include successful completion of a live fire exercise with a concealable firearm. 430 ILCS 66/25 and 75.

Summary of factual data and analytical methodologies: The proposed rule is predicated on legal analysis by DOJ personnel of the language and requirements of ss. 175.60, 227.10 (2m), and 227.11 (2) (a) 3., Stats. Based on that analysis, DOJ has determined that the proposed rule is necessary to comply with statutory requirements.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rule does not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact. Accordingly, DOJ has determined that the gathering and analysis of additional data regarding any such effects or impact is unnecessary.

Effect on small business: The proposed emergency rule will not have a significant effect on small business.

Agency contact person: Assistant Attorney General Thomas C. Bellavia, Wisconsin Department of Justice, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857; phone: (608) 266-8690; email: bellaviatc@doj.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown above no later than one week after the public hearing on this emergency rule is conducted. Information as to the date, location, and time of the public hearing will be published in the Wisconsin Administrative Register.

FINDING OF EMERGENCY

The legality of the 50:1 student-teacher ratio requirement in Jus 17.03 (8) is being challenged in pending litigation. In the course of that litigation, DOJ has determined that the 50:1 requirement is not enforceable under ss. 175.60 (2) (b), 227.10 (2m), and 227.11 (2) (a) 3., Stats., and should be repealed. In accordance with that conclusion, DOJ has ceased enforcing the 50:1 requirement. The rule proposed here will remove the 50:1 requirement from Jus 17.03 (8) and will thereby carry into effect the legislative policies contained in the above-referenced statutory provisions. The alternative of not removing the 50:1 requirement from Jus 17.03 (8) would be contrary to those legislative policies and would leave in the Administrative Code a requirement that DOJ is no longer enforcing. The public welfare thus requires repeal of the 50:1 requirement by emergency rule in order to make it clear to the public that the requirement is no longer being enforced and to promptly resolve the pending litigation with the least burden and inconvenience to the Court and the parties and with the least litigation expense to the people of the State of Wisconsin.

TEXT OF THE PROPOSED PERMANENT RULE

SECTION 1. Jus 17.03 (8) is amended to read:

Jus 17.03 (8) "Instructor-led" means training that is conducted face-to-face individually or in groups ~~with an instructor-student ratio that does not exceed 50 students per instructor~~ and in which instructors actively guide students through each lesson, answer questions, facilitate discussion, and provide feedback on activities and assignments. Learner-led or self-directed learning — the delivery of learning experiences to independent learners who lead and manage their own experience, delivered via web pages, multimedia presentations, computer applications, online presentations, or similar methods — is not instructor-led.

SECTION 2. INITIAL APPLICABILITY. This rule shall take effect upon publication in the official state newspaper.